IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 24395 of 2004

Between:

K.Nagedramma W/o.K.Anjaneyulu
Konidenai Gram Panchayat, Ballikurava Mandal,

Prakasam Dist.

..... PETITIONER

AND

1. The Dist Panchayat Officer Ongole Pramasam Dist.
2. The Divisional Panchayat Officer Ongole Pramasam Dist.
3. The Sub Trasury Officer, Martur, Prakasam Dist.
4. The Branch Manager, State Bank Of India Matur, Prasakam.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or Direction more particularly one in the nature of Writ of Mandamus declaring the Notice Roc No.1435/2004 (pts) A1 dated 6-10-2004, issued by the Respondent No.1 as illegal, arbitrary, and without jurisdiction and against the Principles of natural justice and set-aside the same.

Counsel for the Petitioner: SMT.S.V.INDIRA

Counsel for the Respondents 1 to 3: GP FOR PANCHAYAT RAJ & RURAL DEVELOPMENT

Counsel for Respondents No.4: none present.

The Court made the following:

ORDER:

This Writ Petition is filed questioning the order in Roc.No.1435/2004(Pts)A1, dated 06.10.2004, issued by the District Panchayat Officer, Ongole, as to why the petitioner should not be prohibited from operating on General/S.G.R.Y/E.F.C funds of Konidena Gram Panchayat of Ballikurava Mandal.

2. The contention of the learned counsel for the petitioner is that petitioner had in fact submitted an explanation to the aforesaid show cause notice and the same is not disposed of till now and contends that in any event since as per Rule 42(1) of the Panchayat Raj Rules issued in G.O.Ms.No.30 P.R.RD,
dated 20.01.1995 (certain taxes and other lodging of moneys received by the Gram Panchayat and payment of money from the Gram Panchayat fund) Rules, (the Rules) the District Panchayat Officer can prohibit the executive authority only from drawing moneys, and since 'executive authority' is defined as 'Panchayat Secretary' in Section 2(12) of the A.P. Panchayat Raj Act, (the Act) question of 1st respondent withdrawing cheque powers of the petitioner, who is Sarpanch, does not arise. Reliance is placed on an order, dated 8.7.2004, in W.P.M.P.No.14751 of 2004 in W.P.No.11601 of 2004, in support of the said contention.

3. On the other hand, the contention of the learned Government Pleader is that since the Rule 40 is amended in 1996 granting authority to the Sarpanch to sign all the cheques, in place of the Executive Officer or 'Panchayat Secretary' and since either

due to or oversight or mistake relevant other provisions were not amended and if Rules 40 of the Rules is read harmoniously with Rule 41 of the Rule there cannot be a doubt that the Executive Authority referred to in rule 42(1) of the rules can only be the Sarpanch and since in any event notice issued to the petitioner is only a show cause notice for which petitioner can issue a reply and the matter would then be considered on merits and since a Division bench of this Court in **G.RAJA RAO v THE DISTRICT PANCHAYAT OFFICER, ONGOLE AND OTHERS** (W.A.NO.1451 OF 2004, dated 24.09.2004) refused to entertain the Writ Petition in similar circumstances and directed the Sarpanch to prefer an appeal under Rule 42(2) of the Rules and dismissed the Writ Petition, and since the order dated 08.07.2004 relied on by the learned counsel for the petitioner is only interlocutory the petitioner is liable to be dismissed.

4. No doubt Section 2(12) of the Act defines 'Executive authority' and Rule 42(1) of the Rules say that an Executive Authority can be prohibited by the District Panchayat Officer from drawing the cheque. Prima facie, there appears to be force in the contention of the learned Government Pleader, that in view of Rules 40 and 41 of the Rules 'Sarpanch' can also be taken as 'executive authority' for the purpose of Rule 42(1) of the Rules. But I do not wish to give any opinion there on for deciding the petition, because petitioner has an effective alternative remedy of appeal, which is already availed of by him and in view of the ratio in G.RAJA RAO case, relied on by the learned Government Pleader, I find no grounds to entertain this petition.

5. Hence this Writ Petition is disposed of with a direction to the Collector, Panchayatraj to dispose of the appeal preferred by the petitioner on merits, as per law, as expeditiously as possible at any rate within a period of four weeks from the date of receipt of a copy of this order.

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23-02-2005

Cc in three days.

B/o

Kvrm

To

1. The Dist Panchayat Officer Ongole Pramasam Dist.
2. The Divisional Panchayat Officer Ongole Pramasam Dist.
3. The Sub Trasury Officer, Martur, Prakasam Dist.
4. The Branch Manager, State Bank Of India Matur, Prasakam.

5. 2 CCs to G.P. for Panchayat Raj and Rural Development, High

Court Buildings, Hyderabad.

6. 2 CD copies.